

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED BY AO D.C.

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THOMAS M. GOULD
CLERK, U.S. DISTRICT COURT
W.D. OF TENNESSEE

GWENDOLYN HAWKINS for
EARNEST T. SIMMONS,

Plaintiff,

vs.

JO ANNE BARNHART,
COMMISSIONER OF SOCIAL SECURITY,

Defendant.

X
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No. 05-2600-Ma/P

ORDER DENYING APPOINTMENT OF COUNSEL
AND
ORDER TO ISSUE AND EFFECT SERVICE OF PROCESS

Plaintiff Earnest Simmons, through his mother, Gwendolyn Hawkins, filed a pro se complaint pursuant to 42 U.S.C. § 405(g) on August 18, 2005, along with a motion, completed by Ms. Hawkins, seeking leave to proceed in forma pauperis. Because Ms. Hawkins's motion to proceed in forma pauperis did not adequately document her monthly income, assets, and financial obligations, the Court issued an order on November 8, 2005 directing her, within thirty days, either to submit a properly completed in forma pauperis affidavit or pay the civil filing fee. Ms. Hawkins paid the filing fee on December 7, 2005. The Clerk shall record the defendant as Jo Anne Barnhart, Commissioner of Social Security.

Ms. Hawkins has also filed a motion seeking appointment of counsel. Twenty-eight U.S.C. § 1915(d) provides that the "court

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with Rule 60 and/or 70(e) on 12-22-05

may request an attorney to represent any such person unable to employ counsel."¹ However, "[t]here is no constitutional or . . . statutory right to counsel in federal civil cases." Farmer v. Haas, 990 F.2d 319, 323 (7th Cir. 1993). Because Ms. Hawkins has not demonstrated that she is indigent, she is not eligible for appointed counsel. Therefore, the Court DENIES the motion for appointment of counsel.

Within thirty (30) days of the date of entry of this order, Ms. Hawkins shall personally appear at the Clerk's office and, upon presentation of a copy of this order, the Clerk shall provide her three (3) blank, unsigned summonses. Pursuant to Fed. R. Civ. P. 4(b), Ms. Hawkins is responsible for properly filling out the summonses and presenting them to the Clerk for signature and seal. If the summonses are in proper form, the Clerk shall sign, seal, and issue them to Ms. Hawkins for service on the defendant. Ms. Hawkins is responsible for ensuring that service is effected on the defendant pursuant to Fed. R. Civ. P. 4(i)(2)(A).² Service on the defendant shall include a copy of this order. Ms. Hawkins shall file proof of service pursuant to Fed. R. Civ. P. 4(l).

It is further ORDERED that Ms. Hawkins shall serve a copy of every further document filed in this cause on the attorney for

¹ However, "§ 1915(d) does not authorize the federal courts to make coercive appointments of counsel" to represent indigent civil litigants. Mallard v. United States Dist. Court, 490 U.S. 296, 310 (1989).

² Plaintiff also must comply with Rule 4(c)(2), which requires, in part: "Service may be effected by any person who is not a party and who is at least 18 years of age."

the defendant, or on the defendant if she has no attorney. Ms. Hawkins shall make a certificate of service on every document filed. Ms. Hawkins shall familiarize herself with the Federal Rules of Civil Procedure and this Court's local rules. Ms. Hawkins must promptly notify the Clerk of any change of address or whereabouts. Failure to comply with these requirements, or any other order of the Court, may result in this case being dismissed without further notice.

IT IS SO ORDERED this 19th day of December, 2005.

A handwritten signature in black ink, appearing to read 'JH Mays', written over a horizontal line.

SAMUEL H. MAYS, JR.
UNITED STATES DISTRICT JUDGE



Notice of Distribution

This notice confirms a copy of the document docketed as number 5 in case 2:05-CV-02600 was distributed by fax, mail, or direct printing on December 22, 2005 to the parties listed.

Joe A. Dycus
U.S. ATTORNEY'S OFFICE
167 N. Main St.
Ste. 800
Memphis, TN 38103

Honorable Samuel Mays
US DISTRICT COURT